D.B. CIVIL REVIEW PETITIOIN NO.44/2003

[SGN Khalsa College & School **Vs**. State of Raj. & Ors.]

Date : 17.5.2006

PRESENT

HON'BLE JUSTICE MR. RAJESH BALIA
HON'BLE JUSTICE MR. R.P. VYAS

Mr. M. Mridul, Senior Advocate assisted by
Mr. A.K. Choudhary for the petitioner.
Mr. A.K. Singhal for the respondents.

Learned counsel for the applicant, Shri Kashmiri Lal Midha, respondent No.3 in D.B. Civil Special Appeal No.200/1994 decided on 13.5.2003 has urged that special appeal filed by the non-governmental education institution SGN Khalsa College & School was allowed and the judgment of learned Single Judge was set aside in the following manner:-

> "Learned counsel for the parties are in agreement that this matter is squarely covered by the judgment of this Court in D.B. Civil Writ Petition No.544/1999 (Dr. Kailash Chandra Mittal Vs. State of Rajasthan & others), against the respondent No.3 Teacher and in favour of the appellant.
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> In view of the aforesaid statement made by the learned counsel for the parties, this appeal succeeds

and the same is allowed. The judgment dated 5.1.1994 of the learned Single Judge in S.B. Civil Writ Petition No.2207/1988 is quashed and set aside and the writ petition is dismissed. No order as to costs."

It has been pointed out by the learned counsel for the applicant that the respondent-petitioner was retired from service of the institution on attaining the age of 58 years on 2nd July, 1988 whereas according to the terms of service contract, his age of retirement was 60 years.

The decision in Kailash Chandra Mittal's case referred to in the order allowing the special appeal was rendered in the circumstances noticing the facts from a case where the incumbent of the appellant-institution was retired after commencement of the Rajasthan Non-Governmental Educational Institution Act, 1989 and, therefore, the principle which was enunciated in the light of Act of 1989 and Rules framed thereunder which were not in force as on the date the applicant was retired, cannot be made applicable to the case of the applicant's retirement on 2.7.1988 by its own force.

Having perused the judgment of the Kailash Chandra Mittal's case, we are of the opinion that the contentions raised by

the learned counsel for the applicant that the question required independent consideration and the decision in Kailash Chandra Mittal's case which was founded on the aforesaid premise could not have been automatically made applicable to the present case without considering the matter in the light of the submissions made by the parties on its own merit. This mistake is apparent on from the order.

Accordingly, the application for review is granted. The order dated 13.5.2003 passed in D.B. Civil Special Appeal (writ) No.200/1994 in S.B. Civil Writ Petition No.2207/1988 is recalled and the appeal shall be listed for hearing on 17th July, 2006 as prayed by both the learned counsel for the parties.

However, meanwhile, the operation of the order of the learned Single Judge in the present case shall remain stayed.

[R.P. VYAS], J. [RAJESH BALIA], J.

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